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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 27 of 1986
and
INCOME TAX REFERENCE No 6 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

CHANCHALBEN WD/O HARILAL DUDHIA

Appearance:
MR BB NAIK FOR MR RP BHATT for Petitioner
MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 14/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, in pursuance of a similar controversy, four questions have been referred to this Court in each of the references for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B'.

Questions of law referred to in I.T.R. No. 27/86

"1. Whether the Appellate Tribunal has not erred in law and on facts in not holding that under the Hindu law the assessee could not have thrown her individual property into common hotch pot of the HUF and consequently capital gains, interest on compensation money was assessable in her hands?

2. Whether the Appellate Tribunal has not erred in law and on facts in holding that the compensation money received by the other coparceners really belonged to the coparceners and not to the assessee and hence the addition of interest could not be sustained?

3. Whether the Appellate Tribunal has not erred in law and on facts in not holding that blending of the property with the HUF by the assessee being not in accordance with law the entire compensation received should be considered as that of the assessee and any interest earned by other coparceners on the share received by them should be considered as the income of the assessee?

4. Whether the finding of the Appellate Tribunal is sustaining the deletion of the interest on the compensation of the other coparceners in the income of the assessee is otherwise correct in law?"

Questions of law referred to ino I.T.R. No. 6/86

1. Whether the Tribunal has not erred in law and on facts in holding that the compensation money received by the assessee and other coparceners on partition belonged to the respective co-owner and not to the assessee and hence addition of

interest of Rs. 7,280/- was not justified?

2. Whether the Tribunal has not erred in law and on facts in holding that the assessee was taxable only in respect of her 1/9th share out of the long term capital gain of Rs. 13,920/-?

3. Whether the Tribunal has not erred in law and on facts in not holding that the blending of the property with the HUF by the assessee was not in accordance with law and hence the entire compensation received should be considered as belonging to the assessee and similarly interest earned by other coparceners on the shares received by them would also be the income of the assessee?

4. Whether the decision of the Tribunal in holding that the assessee was liable to be taxed in respect of only 1/9th share of long term capital gain of Rs. 13,920/- and addition of interest of Rs. 7,280/- was required to be made in the hands of the other coparceners and not in the hands of the assessee is correct in law and otherwise sustainable from the material on record?

The said questions pertain to Assessment Years 1977 78 to 1981-82.

2. Learned advocate Shri B.B. Naik has appeared for the revenue whereas nobody has appeared for the respondent-assessee, who is common in both the cases, though the respondent assessee has been duly served.

3. Learned advocate Shri Naik has drawn our attention to the fact that in the case of the respondent assessee, for the Assessment Year 1972-73 a similar controversy had arisen and questions of law, similar to those which are involved in the present references, were referred to this Court and ultimately after hearing the concerned advocates, this Court had come to the conclusion that the Tribunal was in error in deciding the question of taxing the capital gains as it did so without considering the contention of the revenue that blending of the property by the assessee through declaration was not valid. Looking to the impugned order of the Tribunal, this Court was of the view that it was not possible to answer the questions which had been referred to this Court and, therefore, this Court had remanded the matter to the Tribunal for deciding the appeal in accordance with the decision rendered in the said

reference. A copy of the judgment delivered by this Court in the said case, CIT v. Smt. Chanchalben, 220 ITR 24 has been perused by us.

4. In view of the fact that in a similar controversy, this Court had directed the Tribunal to decide the appeal afresh, we are of the view that in the present references also, the Tribunal should be directed to decide the appeals afresh especially in view of the fact that the decisions rendered by the Tribunal in both the appeals are based on the earlier decision of the Tribunal, which was subject-matter of reference before this Court.

5. In the circumstances, the Tribunal is directed to take appropriate decision in pursuance of the observations made and directions given in case of the assessee for the earlier assessment year.

The references stand disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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